observing the Constitution of the United States.[7] As formal indictment and trial by jury would usually be impracticable, Congress has not adopted the constitutional guaranties for the benefit of defendants before extra-territorial courts.

The exercise of this peculiar personal jurisdiction by these courts is simply the most practical means of insuring justice to our citizens in countries — Oriental or barbarous — where standards differ so essentially from ours that just trials of foreigners are impossible.[8] When, however, a civilized nation annexes[9] or assumes the protection[10] of such countries, this objection disappears, and the United States abandons its extraterritorial jurisdiction. The same result is reached when an Oriental nation develops into a modern nation and establishes responsible courts, as in the case of Japan.[11] And, as between the United States and civilized nations, the jurisdiction of consular courts is confined to disputes arising between masters, officers, and crews of vessels belonging to the respective nations, when not breaches of the peace.[12]

THE NATURE OF THE INTEREST NECESSARY TO PERMIT AN OBJECTION TO THE CONSTITUTIONALITY OF A STATUTE. — Since the federal Constitution is the supreme law of the land, there is a general presumption that the governmental bodies have acted in conformity with it. A court will hesitate to declare a statute unconstitutional, since in doing so it necessarily decides that the legislature, either wilfully or negligently, has tried to usurp power denied to it by the people. Consequently, even when a constitutional point is squarely raised, if the court can decide the case on another ground, it will do so. In like manner a court will not listen to an objection to the constitutionality of an act, made by one whose rights are not directly affected by it. Thus the owner of the particular estate may not object to a statute which defeats the right of the remainderman.[1] Nor where a law excludes negroes from a grand jury may a white man object to such exclusion, since he is not prejudiced thereby.[2] And if one has consented to an invalid statute, as to the taking of property without compensation, he cannot later set up the unconstitutionality of the transaction.[3] A more difficult problem arises when one questions the constitutionality of a statute in an official capacity. The question generally arises when application is made for a writ of *mandamus* to compel an official to perform his duty. It would clearly be disastrous if every petty official could, when the attempt was made to compel him to perform an administrative act, set up the defense of the unconstitutionality of the statute.[4] On the other hand,

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[7] *In re* Ross, 140 U. S. 453.

[8] By treaties with the following countries, the United States has extraterritorial jurisdiction in civil or criminal cases or both: Borneo, China, Muscat, Morocco, Persia, Siam, Tripoli, and Turkey.

[9] Madagascar: For. Rel. 1897, 152–4.

[10] British Protectorate of Zanzibar: 5 Moore, Dig. Internat. Law, 868–9.

[11] 2 Moore, Dig. Internat. Law, 660. The United States has promised to relinquish its extraterritorial rights when the condition of Chinese law warrants it in so doing. Treaty with China, Oct. 8, 1903, Art. XV.

[12] 5 Moore, Dig. Internat. Law, 128. *Cf. In re* Wildenhus, 28 Fed. 924; Tellefsen *v.* Fee, 168 Mass. 188.

[1] Sinclair *v.* Jackson, 8 Cow. (N. Y.) 543.

[2] Com. *v.* Wright, 79 Ky. 22.

[3] Haskell *v.* New Bedford, 108 Mass. 208. See 21 HARV. L. REV. 133.

[4] See United States *v.* Marble, 3 Mackey (D. C.) 32.

each official has sworn to uphold the Constitution, and a court may well be reluctant to force him to do an act which may be in violation of his oath and detrimental to the rights of the people.[5] Much depends, necessarily, upon the facts in each particular case. Where the validity of the statute appears to be doubtful, the great weight of authority is that the court will consider the defense.[6] Especially is this true where the official will incur a personal liability if the statute is later declared invalid, as in the case of an auditor who is compelled to pay out money.[7]

When, however, a state official appeals from a state court to a federal court, a different problem is presented. The decision of the court of last resort of the state is binding on the Supreme Court of the United States unless a federal question is involved.[8] In a recent case where a county court was prevented from levying a tax by virtue of a statute which it claimed to be unconstitutional, and where the constitutionality of the statute had been upheld by the highest court of the state, the federal Supreme Court refused to take jurisdiction on the ground that, since the appellant's interest was official and not personal, no federal question was involved. *Braxton County Court* v. *West Virginia*, 208 U. S. 192. Even though the official is liable for costs in the state suit, this pecuniary interest will not be sufficient to raise a federal question under the Fourteenth Amendment, since the liability for costs does not affect the merits of the case.[9] It is believed that the same result would be reached, though the official might later become personally liable for his acts under the statute, as in the case of a tax-collector collecting under an unconstitutional law. Though the erroneous decision of the state court might prove disadvantageous to him, such a decision does not give him an appealable interest, since he is not directly affected.

LIABILITY FOR NEGLIGENT MISREPRESENTATIONS. — Whether or not an action can ever be maintained for the negligent use of language is a question on which there seems to be no conclusive authority. It is, however, raised squarely by a recent Ohio decision. A demurrer was sustained to a petition alleging that the defendant company was engaged in making abstracts of title to realty; that it was customary for purchasers of realty, even though under no contract relation with the defendant, to rely on these abstracts; and that the plaintiff was damaged by acting on a negligently defective abstract made by the defendant. *Thomas* v. *Guarantee Title & Trust Co.*, Circ. Ct. Cuyahoga Co., Nov. 18, 1907. It seems clear that the mere existence of a custom to rely on such abstracts is not sufficient basis for a contract relation[1] and that, in spite of some decisions which appear to leave the matter in doubt,[2] the plaintiff could not recover in an action for deceit.[3] If the plaintiff is to recover, therefore, negligent use of language must be the basis of the action. It has been held that a lawyer is not liable for the results of a negligent mistake in a casual opinion given to one not a

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[5] Van Horn *v.* State, 46 Neb. 62.
[6] See 6 Am. & Eng. Encyc., 2 ed., 1090.
[7] Denman *v.* Broderick, 111 Cal. 96.
[8] Rasmussen *v.* Idaho, 181 U. S. 198.
[9] Smith *v.* Indiana, 191 U. S. 138.

[1] Savings Bank *v.* Ward, 100 U. S. 195. *Cf.* Dickle *v.* Abstract Co., 89 Tenn. 431, allowing recovery where the defendant knew that the plaintiff would so rely.
[2] Krause *v.* Busacker, 105 Wis. 350.
[3] Peek *v.* Derry, 14 App. Cas. 337. See 14 HARV. L. REV. 185.